

UNITED STATES TAX COURT
WASHINGTON, DC 20217

FELIX GURALNIK,)	
)	
Petitioner,)	
)	
v.)	Docket No. 4358-15 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	

ORDER

The Court has concluded that this case is subject to the procedures of Tax Court Rules 182(e) and 183. Accordingly, it is hereby

ORDERED that the Clerk of the Court shall attach to this Order, and serve on the parties pursuant to Tax Court Rule 183(b), the Court's Recommended Findings of Fact and Conclusions of Law. The parties are advised that specific written objections and responses may be filed with the Court as provided in Tax Court Rule 183(c). The Tax Court Rules of Practice and Procedure are available at www.ustaxcourt.gov.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
August 24, 2015

SERVED Aug 24 2015



AUG 24 2015

UNITED STATES TAX COURT

FELIX GURALNIK, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 4358-15L.

R sent P a notice of determination sustaining the filing of a Federal tax lien. The 30th day after the determination was a Sunday. The next day (Monday, the 31st day) was Washington's Birthday, a legal holiday in the District of Columbia. On Tuesday (the 32nd day) both District and Federal government offices in the Washington, D.C. area, specifically including the Tax Court, were officially closed because of a winter snowstorm. The Court reopened for business on Wednesday (the 33rd day), and the petition was delivered that day by FedEx. In sending his petition to the Court, P used a class of service that was not then among those designated by the Commissioner as a "private delivery service" within the meaning of I.R.C. sec. 7502(f) and Notice 2004-83, 2004-2 C.B. 1030.

R filed a motion to dismiss for lack of jurisdiction on the ground that the last day to timely file a petition was Tuesday (the 32nd day).

SERVED Aug 24 2015

Held: The day of official closing of District and Federal government offices, specifically including the Tax Court, was a legal holiday in the District of Columbia for purposes of I.R.C. sec. 7503. Accordingly, the filing of the petition on Wednesday (the 33rd day) was timely. R's motion will be denied.

Eric M. Creizman, for petitioner.

Michael J. De Matos, for respondent.

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ARMEN, Special Trial Judge: These recommended findings of fact and conclusions of law are filed pursuant to Rules 182(e) and 183.¹

This collection review case is before the Court on respondent's Motion To Dismiss For Lack Of Jurisdiction, as supplemented. Respondent moves that the case be dismissed on the ground that the petition was not filed within the time prescribed by section 6330(d) or section 7502. As explained below, we will deny respondent's motion.

At the time that the petition was filed with the Court, petitioner resided in the State of New York.

¹ Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure and all section references are to the Internal Revenue Code, as amended.

Background

On January 16, 2015, respondent sent to petitioner by certified mail a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and 6330 (notice of determination). In the notice of determination, respondent sustained the filing of a notice of Federal tax lien in respect of petitioner's outstanding income tax liabilities for 2003 and 2005.²

Respondent advised petitioner in the notice of determination that “[i]f you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter.” See sec. 6330(d)(1). The 30th day “after the date of this letter”, which was also the 30th day after the mailing of the notice of determination, was Sunday, February 15, 2015. The following day, Monday, February 16, 2015, was Washington's Birthday, a legal holiday in the District of Columbia. On the next day, Tuesday, February 17, 2015, both District of Columbia and Federal government offices in the Washington, D.C. area, specifically including the Tax Court, were officially closed for business because of Winter Storm Octavia.

² There is no issue regarding the address to which the notice of determination was sent. Further, there is no issue regarding the address to which the notice of tax lien filing was sent. See sec. 6320(a)(2)(C); see also Buffano v. Commissioner, T.C. Memo. 2007-32.

<http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives>; <http://dc.gov/snow217>; <http://www.weather.com/storms/winter/news/octavia-midatlantic-snow>. The Tax Court reopened for business on Wednesday, February 18, 2015.

Petitioner sought to challenge the notice of determination by filing a petition with this Court. The petition, which was sent by FedEx Corporation (FedEx), was delivered to the Court on the morning of Wednesday, February 18, 2015, and filed by the Court later that day.³ The envelope in which the petition was received bore a FedEx label reflecting a “Ship Date” of Friday, February 13, 2015. The label also reflected a class of delivery service that was not then among those designated by the Commissioner as a “private delivery service” (PDS) within the meaning of section 7502(f)(2) and Notice 2004-83, 2004-2 C.B. 1030, discussed infra.⁴

³ The Court does not maintain an after-hours “drop-box” and therefore does not accept papers when the Court is not open for business. See Rule 10(d) (regarding the Court’s business hours). Further, the Court does not presently allow petitions to be filed electronically. See http://www.ustaxcourt.gov/eaccess/Petitioners_Guide_to_eAccess_and_eFiling.pdf; p. 74; http://www.ustaxcourt.gov/eaccess/Practitioners_Guide_to_eAccess_and_eFiling.pdf, p. 80.

⁴ Petitioner used “First Overnight” service, the most expedited (and expensive) overnight service available from FedEx. “First Overnight” service, which promises delivery “first thing” next business-day morning (typically by 8:00
(continued...))

As stated above, respondent filed a Motion To Dismiss For Lack Of Jurisdiction on the ground that the petition was not filed within the time prescribed by section 6330(d) or section 7502.⁵ Thereafter petitioner filed a Notice Of Objection, and respondent rejoined by filing a Response. Petitioner then filed a Reply accompanied by two declarations.

Up to that time the parties' dispute had focused solely on the legal efficacy of the class of delivery service that petitioner had chosen to use in engaging FedEx to deliver his petition to the Court. Accordingly, the Court issued an order directing the parties to address whether, because of the official closing of both District and Federal government offices, specifically including the Tax Court, on Tuesday, February 17, 2015, section 7503 served to extend the time within which petitioner was obliged to file his petition with the Court.

⁴(...continued)
or 8:30 a.m.), did not exist in 2004 when Notice 2004-83, 2004-2, C.B. 1030, was issued. At that time "Priority Overnight" service, which promises delivery next business-day morning (typically by 10:30 a.m.), was the "top" overnight service available from FedEx and was (and remains) designated by the Commissioner as a PDS. "First Overnight" service was added to the list of PDSs effective May 6, 2015, less than three months after the petition was filed in the instant case. See infra note 8 and associated text.

⁵ Concurrently with the motion respondent filed a Supplement in which he demonstrated the date of mailing of the notice of determination.

Petitioner, in his Response to the Court's order, points out that the Tax Court Rules of Practice and Procedure do not address how time should be computed when the clerk's office is inaccessible but that the Federal Rules of Civil Procedure do address that matter.⁶ Petitioner then invokes the directive of Tax Court Rule 1(b) that "[w]here in any instance there is no applicable rule of procedure, the Court or the Judge before whom the matter is pending may

⁶ Fed.R. Civ. P. 6(a)(3)(A), which is cited and relied on by petitioner, provides as follows:

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

* * * * *

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday;

prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand” and argues that the approach of rule 6(a)(3)(A) of the Federal Rules of Civil Procedure should apply.

Respondent, in his Response to the Court’s order, acknowledges that dismissal of petitioner’s case “may seem harsh,” but argues that a “snow day” does not constitute a legal holiday for purposes of section 7503.

Discussion

The Tax Court is a court of limited jurisdiction, and we may exercise our jurisdiction only to the extent authorized by Congress. See sec. 7442; Moosally v. Commissioner, 142 T.C. 183, 195-196 (2014). In a collection review proceeding, the Court’s jurisdiction under sections 6320 and 6330 depends on the issuance of a valid notice of determination and the filing of a timely petition. See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Moorhous v. Commissioner, 116 T.C. 263, 269 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); see also Rule 330(b).

In the instant case, petitioner has not questioned the validity of the notice of determination, and there is nothing in the record that would lead us to do so.

Rather, whether the Court may exercise jurisdiction turns on whether petitioner, in seeking to appeal from the notice of determination, timely filed a petition.

Insofar as timeliness is concerned, section 6330(d)(1) provides that a taxpayer must appeal within 30 days of the Commissioner's determination.⁷ This 30-day window is extended if the 30th day falls on other than a workday; thus: "When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday." Sec. 7503. As relevant herein, the term "legal holiday" means a legal holiday in the District of Columbia. Id.; Rule 25(a)(2), (b); D.C. Code sec. 28-2701 (Lexis Nexis 2013); sec. 301.7503-1(b), *Proced. & Admin. Regs.*

⁷ The statute provides as follows:

SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

(d) Proceeding After Hearing.--

(1) Judicial Review of Determination.--The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

It should be noted that sec. 6330 concerns itself with levies, whereas sec. 6320 concerns itself with liens. However, sec. 6320(c) makes provisions of sec. 6330, specifically including subsec. (d)(1), applicable to judicial review of determinations involving liens.

A timely mailed petition may be treated as though it were timely filed. Sec. 7502(a). Thus, if a petition is received by the Court after the expiration of the statutory filing period, it is nevertheless deemed to be timely filed if the date of the U.S. Postal Service postmark stamped on the envelope in which the petition was mailed is within the time prescribed for filing. Id.; sec. 301.7502-1, *Proced. & Admin. Regs.*

In addition, a petition that is timely sent to the Court by a designated delivery service may, pursuant to section 7502(f)(1), be treated as though it were timely mailed for purposes of section 7502(a). In that regard, section 7502(f)(2) defines the term “designated delivery service” as any delivery service provided by a trade or business if the Commissioner designates the service after first determining that it satisfies statutory and regulatory standards. In Notice 97-26, 1997-1 C.B. 413, the Commissioner first provided a list of companies and classes of delivery service that constitute designated delivery services (commonly known as “private delivery services” or PDSs) for purposes of section 7502. As relevant herein, the Commissioner updated that list in Notice 2004-83, supra, which was effective January 1, 2005.⁸

⁸ The Commissioner next updated the list in Notice 2015-38, 2015-21 I.R.B. 984, which was effective May 6, 2015.

Here, there is no dispute that respondent mailed the notice of determination to petitioner on January 16, 2015. The 30th day thereafter was Sunday, February 15, 2015. The following day, Monday, February 16, 2015, was Washington's Birthday, which was a legal holiday in the District of Columbia. Rule 25(b); D.C. Code sec. 28-2701. On the next day, Tuesday, February 17, 2015, both District and Federal government offices in the Washington, D.C. area, specifically including the Tax Court, were officially closed for business because of a winter snowstorm. The Court reopened for business on Wednesday, February 18, 2015, and the petition was delivered to and filed by the Court on that day.

Invoking the timely mailing/timely filing provisions of section 7502, petitioner contends that the petition should be treated as timely filed because it was "mailed" on Friday, February 13, 2015, as demonstrated by the "postmark" on the FedEx label affixed to the envelope in which the petition was sent to the Court. See sec. 7502(f)(1); see also Austin v. Commissioner, T.C. Memo. 2007-11. Alternatively, petitioner contends, citing rule 6(a)(3)(A) of the Federal Rules of Civil Procedure, that the official closing of both District and Federal government offices, specifically including the Tax Court, on Tuesday, February 17, 2015, served to extend the time within which he was obliged to file his petition with the Court.

In contrast, respondent contends that the ameliorating provisions of section 7502 do not apply because the petition was sent by a class of delivery service that was not among those then designated by the Commissioner as PDSs. See sec. 7502(f)(2); Notice 2004-83, supra; see also Eichelburg v. Commissioner, T.C. Memo. 2013-269; Scaggs v. Commissioner, T.C. Memo. 2012-258; Rackowski v. Commissioner, T.C. Memo. 2007-72. Therefore, respondent reasons, timeliness is determined by the date that the petition was actually delivered to and filed by the Court, which was Wednesday, February 18, 2015, meaning (in respondent's view) that the petition was late by one day. See Eichelburg v. Commissioner, supra; Scaggs v. Commissioner, supra; Rackowski v. Commissioner, supra. Respondent also contends that the closing of government offices, specifically including the Tax Court, on account of a so-called snow day does not constitute a legal holiday that serves to extend the time within which a petition must be filed.

We agree with respondent that the petition was sent to the Court by a class of delivery service that was not among those then designated by the Commissioner as PDSs. Nevertheless, we hold that the petition was timely filed and that the Court has jurisdiction to hear petitioner's case. We so hold because section 7503 served to extend the filing deadline to Wednesday, February 18, 2015, thereby making the receipt of the petition on that date timely. In this regard, we treat the

official closing of both District and Federal government offices, specifically including the Tax Court, on Tuesday, February 17, 2015, because of a winter snowstorm as a legal holiday in the District of Columbia for purposes of section 7503.

Legislative history supports our holding. Thus, as relevant herein, the origin of section 7503 lies in section 274(a) of the Revenue Act of 1926, ch. 27, 44 Stat. at 55, which did not count Sunday as the last day on which a taxpayer could timely file a petition with the Board of Tax Appeals. This provision represented a change from section 274(a) of the Revenue Act of 1924, ch. 234, 43 Stat. at 297, which counted Sunday as the last day. See Satovsky v. Commissioner, 1 B.T.A. 22 (1924) (under the 1924 Revenue Act, if the last day fell on a Sunday, the Board lacked jurisdiction to act on a petition that was received on the following day); see also S. Cal. Loan Ass'n v. Commissioner, 4 B.T.A. 223, 236-239 (1926).

The Sunday provision was subsequently broadened so as to also not count (as the last day to timely file a petition) a legal holiday in the District of Columbia. Sec. 272(a), Revenue Act of 1934, ch. 277, 48 Stat. at 741. See S. Rept. No. 558 (1934), 1939-1 C.B. (Part 2) 586; see also S. Cal. Loan Ass'n v. Commissioner, 4 B.T.A. at 237-238 (discussing a failed attempt to include a holiday provision in

the Revenue Act of 1926). Thereafter this Sunday/holiday provision was incorporated into the Internal Revenue Code of 1939 as section 272(a)(1).

Saturday was first added to the Sunday/holiday provision by the International Organizations Immunities Act, Pub. L. No. 79-291, sec. 203, 59 Stat. at 673 (1945). The rationale for the amendment is illuminated by the Senate Finance Committee report, which explains as follows:

This section of the bill relates to the 90-day period within which a petition may be filed with The Tax Court of the United States (formerly the Board of Tax Appeals) for a redetermination of the liability in respect of certain taxes. Under the present law, in computing the period of 90 days, Sunday or a legal holiday in the District of Columbia is not counted as the ninetieth day. In view of a recent order of The Tax Court, dated September 7, 1945, to the effect that Saturdays constitute no part of the administrative workweek, it is desirable that Saturdays also be treated in a like manner.^[9]

Accordingly, this section amends section 272 (a) (1) (relating to the redetermination of a deficiency * * *, so that in the computation of the 90-day period for the filing of the petition Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the ninetieth day. This amendment would be effective on and after September 8, 1945, which is the first Saturday after the date of the order of the Tax Court declaring that there would be no business hours on Saturday.

⁹ In 1945 the Court established a five-day workweek in accordance with the Federal Employees Pay Act of 1945, Pub. L. No. 79-106, 59 Stat. at 303 (1945). See Pleasant Valley Wine Co. v. Commissioner, 14 T.C. 519 (1950) (Murdock, J.). After September 8, 1945, the Court no longer kept its docket room open on Saturday for the receipt of petitions and no longer collected its mail on Saturday. Id. at 521 note 2.

S. Rept. No. 79-861, p.7 (1945).

This report makes clear that Saturday was not to be counted as the last day to file a petition because the Court was closed for business on Saturday. See Rule 10(d) (regarding the Court's business hours). Indeed, this is the same rationale for not counting Sunday or a legal holiday as the last day to file a petition. Id. In our view, this rationale applies to a day on which the Court is not open for business because both District and Federal government offices in the Washington, D.C. area are officially closed for business on account of a winter snowstorm.

Our view finds further support in Winkler v. Commissioner, 56 T.C. 844, 847 (1971), wherein the Court concluded as follows:

Finally, it is patently clear that the purpose underlying section 7503 is to extend the time for filing a document when the last day for filing would, under the ordinary rule, be a day on which the office in which the document had to be filed was closed. Thus, since the Federal offices were closed on February 15, the functional purpose of section 7503, as well as its literal mandate, is fulfilled by treating such day as a legal holiday.^[10]

¹⁰ In 2000 the Commissioner cited Winkler v. Commissioner, 56 T.C. 844 (1971), with seeming approval in Field Service Advisory 200021010, 2000 WL 681239 (May 25, 2000), and construed the Court's holding as follows: "[T]he underlying purpose of section 7503 is to extend the time for filing a document when the last day for filing would, under the general rule, be a day on which the office in which the document had to be filed was closed."

The issue in Winkler was whether February 15, 1971, the third Monday in February of that year, was to be considered a legal holiday in the District of Columbia pursuant to a recently enacted Federal law providing for uniform observance of certain legal public holidays on Mondays, notwithstanding the D.C. Code that, at the time, provided for the observance of the holiday on February 22, George Washington's actual birthday. Ultimately the Court concluded that February 15, 1971, should be considered a legal holiday in the District of Columbia. But notably, in the final analysis the Court regarded as determinative the fact that the Court was closed for business and therefore unable to receive and file petitions on that day.

Finally, mention should be made of rule 6(a)(3)(A) of the Federal Rules of Civil Procedure, cited by petitioner and quoted supra in note 6, which deals with computing and extending time when the clerk's office is inaccessible. In In re Swine Flu Immunization Prod. Liab. Litig., 880 F.2d 1439 (D.C. Cir. 1989), the Court of Appeals, in determining the last day to file an administrative claim under the Federal Tort Claims Act where jurisdiction was at issue, excluded Sunday and the following day when government offices were closed on account of a snowstorm. In so doing, the Court of Appeals "consult[ed] Civil Rule 6(a)

as a guide to interpreting the ‘jurisdictional’ statute establishing the time for filing with the agency” and stated:

If anything, the case for exclusion of snow days is stronger than that for Sundays; since the latter are known in advance, a plaintiff could always accommodate a contrary rule by filing on the previous Friday. That is not possible with respect to snow days, and, given the rule that Sundays are not counted, we find it inconceivable that Congress would have wished to bar plaintiffs who fail to anticipate on Friday that the Government will decide to close a filing office the following Monday due to a snowstorm. [Emphasis added.]

Id. at 1445.

Virtually the same rule as rule 6(a)(3)(A) of the Federal Rules of Civil Procedure appears as rule 26(a)(3)(A) of the Federal Rules of Appellate Procedure, which also extends the filing time when the clerk’s office is inaccessible.¹¹ See United Mine Workers v. Dole, 870 F.2d 662, 665 (D.C. Cir.

¹¹ In relevant part, Fed. R. App. P. 26(a) provides as follows:

Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to

(continued...)

1988) (“[T]ime periods, including jurisdictional time periods, are to be construed in accordance with Fed.R.App.P. 26(a), excluding final weekend days and holidays unless a specific statutory provision requires otherwise.”).

Tax Court Rule 25 deals with the computation of time and is not unlike rule 6(a) of the Federal Rules of Civil Procedure and rule 26(a) of the Federal Rules of Appellate Procedure. Indeed, Rule 25(a) is based in part on rule 6(a) of the Federal Rules of Civil Procedure. See Rule 25(a) note, 60 T.C. 1080.

Notably, however, Rule 25 is silent regarding inaccessibility of the Tax Court clerk’s office. In petitioner’s view, and as mentioned earlier in the text, this silence implicates Tax Court Rule 1(b): “Where in any instance there is no applicable rule of procedure, the Court or the Judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal

¹¹(...continued)

run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

* * * * *

(3) Inaccessibility of the Clerk’s Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday;

Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand.”

Clearly, in the case at hand the closing of both District and Federal government offices, specifically including the Tax Court, because of a winter snowstorm, together with the fact that the Tax Court does not maintain an after-hours “drop-box” and does not presently allow petitions to be filed electronically, means that the Tax Court’s clerk’s office was inaccessible on the day of the winter snowstorm. Under such circumstances we find it inconceivable that Congress would have intended, absent a specific statutory provision requiring otherwise, to bar a taxpayer who fails to anticipate on a Friday that the Government will decide to close a filing office on the first workday of the following week on account of a snowstorm. See In re Swine Flu Immunization Prod. Liab. Litig., 880 F.2d at 1445; United Mine Workers v. Dole, *supra*. Because there is no such specific statutory provision requiring otherwise, we will deny respondent’s motion, as supplemented.

Conclusion

We conclude that the petition was timely filed. See sec. 7503. Accordingly, the Court has jurisdiction to hear petitioner’s case.

To give effect to the foregoing,

An order denying respondent's
motion, as supplemented, and restoring
this case to the general docket will be
issued.